IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

BRIAN M. GALLAGHER	:	CIVIL ACTION
	:	
v.	:	
	:	
BOROUGH OF DOWNINGTOWN, LINDA M. BAUGHER, ANTHONY S. GAMBALE, WILLIAM MASON, HEATHER BRUNO, MICHAEL MENNA, SR., JOSEPH MCGRATH, JACK FRANCELLO, and DENNIS WALTON	:	NO. 98-3885

MEMORANDUM AND ORDER

HUTTON, J. NOVEMBER 29, 1999

Currently before the Court are Plaintiff's Motion for Leave to File Amended Complaint (Docket No. 10) and Defendants' response thereto. For the reasons stated below, Plaintiff's Motion is **DENIED**.

I. BACKGROUND

Brian M. Gallagher ("Plaintiff") filed on July 22, 1998, a multi-count Complaint against the Borough of Downingtown, Linda M. Baugher, Anthony S. Gambale, William Mason, Heather Bruno, Michael Menna, Sr., Joseph McGrath, Jack Francello, and Dennis Walton (collectively, the "Defendants"). Plaintiff's claim of arises out of his belief that the Defendants unlawfully terminated his employment.

On May 13, 1999, the Court entered an Order dismissing two of Plaintiff's causes of action, thereby leaving for adjudication only

Plaintiff's claim that his due process rights under the Fourteenth Amendment were violated when his employment was terminated without prior notification of any specific and relevant charges for which he was being terminated. Plaintiff also alleges that he was not provided an opportunity to be heard by or before the Defendants.

Plaintiff brings the instant Motion, requesting leave of this Court so that he may "amplify the original [C]omplaint's allegations" on his due process theory and to "allege that the method of the [P]laintiff's termination was also a violation of the Pennsylvania Sunshine Act." (See Pl.'s Brief in Supp. of Motion for Leave to File Amend. Compl. at 2).

II. DISCUSSION

A. Legal Standard for Motion to Leave to Amend Complaint

Federal Rule of Civil Procedure 15(a) provides as follows:

> Amendments. A party may amend the party's pleading once as a matter of course at any time before a responsive pleading is served or, if the pleading is one to which no responsive pleading is permitted and the action has not been placed on the trial calendar, the party may also amend it at any time within 20 days after it is served. Otherwise a party may amend the party's pleading only by leave of court or by written consent of the adverse party; and leave shall be freely given when justice so requires. A party shall plead in response to an amended complaint within the time remaining for response to the original pleading or within 10 days after service of the amended pleading, whichever period may be longer, unless the court otherwise orders.

Fed. R. Civ. P. 15(a). Motions to amend under Rule 15(a) may be filed to cure a defective pleading, to correct insufficiently stated claims, to amplify a previously alleged claim, to change the

nature or theory of the case, to state additional claims, to increase the amount of damages sought, to elect different remedies, or to add, substitute or drop parties to the action. L. Charles Alan Wright, Arthur R. Miller, Mary Kay Kane, Federal Practice and Procedure: Civil 2d § 1474 (1990). See Goodman v. Mead Johnson & Co., 534 F.2d 566, 569 (3d Cir. 1976) (district court improperly denied amendment to add claims and substitute parties), cert. denied, 429 U.S. 1038, 97 S. Ct. 732 (1977). It must be noted that in considering such a motion, Rule 15(a) expressly demands that "leave shall be freely given when justice so requires." Fed. R. Civ. P. 15(a).

The Third Circuit stated, however, that the "potential for undue prejudice [to the non-moving party] is 'the touchstone for the denial of the leave to amend.'" Coventry v. United States Steel Corp., 856 F.2d 514, 519 (3d Cir. 1988) (quoting Cornell & Co., Inc. v. Occupational Safety & Health Review Comm'n, 573 F.2d 820, 823 (3d Cir. 1978)); Howze v. Jones & Laughlin Steel Corp., 750 F.2d 1208, 1212 (3d Cir. 1984) (same). This is not to say, however, that courts infrequently grant such motions.

Leave to amend may be properly denied where there exists "undue delay, bad faith or dilatory motive on part of the movant . . . undue prejudice to the opposing party by virtue of allowance of the amendment, futility of amendment . . . ." Foman v. Davis, 371 U.S. 178, 182, 83 S. Ct. 227, 230 (1962). The Foman Court

warned, however, that is it an abuse of discretion if the district court refuses to grant leave to amend without providing a reason for its decision. Id., 83 S. Ct. at 230.

Additionally, in appropriate circumstances, a district court must consider the "relation back" doctrine when deciding whether to grant a motion for leave to amend. Federal Rule of Civil Procedure 15 states that

> [a]n amendment of a pleading relates back to the date of the original pleading when (1) relation back is permitted by the law that provides the statute of limitations applicable to the action, or (2) the claim or defense asserted in the amended pleading arose out of the conduct , transaction, or occurrence, set forth or attempted to be set forth in the original pleading . . . .

Fed. R. Civ. P. 15(c)(1)-(2). The relation back doctrine, where applicable, allows a plaintiff to avoid the application of a statute of limitations where the claim asserted in the amended complaints arises out of the conduct, transaction, or occurrence set forth in the original pleading. As a general matter, amendments that restate or amplify the original pleading should relate back. See, e.g., Wolfson v. Lewis, 168 F.R.D. 530, 534 (E.D. Pa. 1996); Klitzner Indus., Inc. v. H.K. James & Co., Inc., 96 F.R.D. 614, 617 (E.D. Pa. 1983); Ratliffe v. Insurance Co. of N. Am., 482 F. Supp. 759, 762-63 (E.D. Pa. 1980). Courts routinely deny a motion for leave to amend on the basis of futility where the plaintiff fails to commence his or her action before the applicable statute of limitations tolls. See Thomas v. Township of Cherry,

Butler County, 722 A.2d 1150, 1153 (Pa. Commw. Ct. 1999); Bologna v. St. Mary's Area Sch. Bd., 699 A.2d 831, 833 (Pa. Commw. Ct. 1997); Hain v. Board of Sch. Dir. of Reading Sch. Dist., 641 A.2d 661, 662 (Pa. Commw. Ct. 1994). The Court now considers Plaintiff's Motion and Defendants' response thereto.

B. Plaintiff's Motion for Leave to Amend Complaint

Plaintiff seeks to amend his Complaint to allege a cause of action under the Pennsylvania Sunshine Act (the "Sunshine Act" or the "Act"), 65 Pa. Cons. Stat. Ann. § 701 et seq. (West 1999), alleging that the Sunshine Act only "came to [counsel's] attention upon reading Thomas v. Township of Cherry, 722 A.2d 1150 (Pa. Commw. Ct. 1999)." (Pl.'s Brief in Supp. of Motion for Leave to File Amend. Compl. at 2). Plaintiff alleges that his requested amendment will "amplify the original [C]omplaint's allegations," (see Pl.'s Brief in Supp. of Motion for Leave to File Amend. Compl. at 2), but also states that "the additional allegation arises from the same transaction or occurrence set out or attempted to be set out in the original [C]omplaint." (Pl.'s Brief in Supp. of Motion for Leave to File Amend. Compl. at 3 (emphasis added)). Plaintiff finally asserts that leave to amend should be granted because, as precedent dictates, he is only attempting to amplify a previously alleged claim. (Pl.'s Brief in Supp. of Motion for Leave to File Amend. Compl. at 3).

Defendants argue that Plaintiff's Motion should be denied because the Sunshine Act's statute of limitations renders futile the proposed amendment. Defendants argue that because Plaintiff did not make a timely challenge to the April 17, 1998, meeting at which his employment was terminated, Plaintiff's claim is expressly time-barred by the Sunshine Act. Defendants base their argument on the following provision of the Sunshine Act:

> A legal challenge under [the Sunshine Act] shall be filed within 30 days from the date of a meeting which is open, or within 30 days from the discovery of any action that occurred at a meeting which was not open at which [the Sunshine Act] was violated, provided that, in the case of a meeting which was not open, no legal challenge may be commenced more than one year from the date of said meeting.

65 Pa. Cons. Stat. Ann. § 713 (West 1999). Section 713 raises two issues: (1) whether Plaintiff timely filed his original Complaint; and (2) if Plaintiff's original Complaint was timely filed, whether the relation back doctrine is applicable.\[1]

The Court now considers whether Plaintiff timely filed his original Complaint such that he may maintain a cause of action under the Sunshine Act. Plaintiff's proposed Amended Complaint alleges that Defendant's decision to terminate Plaintiff's employment was neither made at an open meeting nor in an executive session. (See Pl's proposed Amend. Compl. at ¶ 19). Therefore, on the facts alleged by Plaintiff, a cognizable legal challenge could

[1] Both parties ignore Rule 15's relation back doctrine. For the sake of specificity and clarity, the Court considers, sua sponte, the applicability of the relation back doctrine.

be brought pursuant to section 713 of the Sunshine Act "within 30 days from the discovery of an action that occurred at a meeting which was not open at which [the Act] was violated." 65 Pa. Cons. Stat. Ann. § 713 (West 1999). Given that Plaintiff learned of his termination on April 17, 1998, the Court treats said date as the first day of the Act's tolling period. Therefore, Plaintiff had 30 days from April 17, 1998, or until May 16, 1998, to commence an action under the Sunshine Act. Plaintiff filed his original Complaint on July 22, 1998, well-after the Act's express filing period had tolled.\[2] It is well settled that the amendment of a complaint is futile if the amendment will not cure the deficiency in the original complaint. Jablonski v. Pan Am. World Airways, Inc., 863 F.2d 289, 292 (3d Cir. 1988) (citing Massarky v. General Motors Corp., 706 F.2d 111, 125 (3d Cir.), cert. denied, 464 U.S. 937, 104 S. Ct. 348 (1983)). Plaintiff's proposed Amendment cannot be timely given that he filed his original Complaint after the Act's statute of limitations tolled. See, e.g., Thomas v. Township of Cherry, Butler County, 722 A.2d 1150, 1153 (Pa. Commw. Ct. 1999) (action untimely under Sunshine Act); Bologna v. St. Mary's Area Sch. Bd., 699 A.2d 831, 833 (Pa. Commw. Ct. 1997) (action untimely under Sunshine Act); Hain v. Board of Sch. Dir. of Reading Sch. Dist., 641 A.2d 661, 662 (Pa. Commw. Ct. 1994) (action untimely

[2] The relation back doctrine, if applicable, would allow Plaintiff to relate back his Sunshine Act claim to the date he filed his original Complaint. The relation back doctrine is inapplicable however, for Plaintiff filed his original Complaint after the Act's 30 day filing period tolled.

under Sunshine Act). As Plaintiff's original claim was untimely, his proposed amendment is untimely and, therefore, futile. Accordingly, Plaintiff's Motion for Leave to Amend is denied.

An appropriate Order follows.

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O R D E R

AND NOW, this 29th day of November, 1999, upon consideration of Plaintiff's Motion for Leave to File Amended Complaint (Docket No. 10) and Defendants's response thereto, IT IS HEREBY ORDERED that said motion is **DENIED**.

BY THE COURT:

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HERBERT J. HUTTON, J.